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**IN THE
COURT OF APPEALS OF INDIANA**

LUIS BRIONES,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A03-1009-CR-450

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0912-MR-28

April 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Luis Briones appeals his convictions for murder, Class C felony criminal recklessness, and Class A misdemeanor carrying a handgun without a license. We affirm.

Issue

Briones raises one issue, which we restate as whether the trial court abused its discretion by admitting the victim's statement as a dying declaration and whether the admission of the statement violated the Confrontation Clause of the Sixth Amendment.

Facts

On October 27, 2009, Delvon Davidson and Bernard Vaughn were driving in South Bend in Vaughn's vehicle. Davidson and Vaughn stopped at a convenience store, and Briones saw them. Briones, his girlfriend, Iesha Hunt, and Hunt's infant son had also stopped at the convenience store. Briones tried unsuccessfully to get Vaughn's attention and told Hunt to follow Vaughn. According to Hunt, Briones was aggressive and yelling. When Vaughn stopped at a red light, Hunt stopped beside Vaughn's vehicle. Briones yelled out the window and waved a gun at Vaughn's car. When Hunt saw the gun, she pulled into a parking lot, and Briones jumped out of her car. Briones repeatedly fired his gun at Vaughn's vehicle. One of the bullets struck Davidson in the back of the neck and lodged in his spinal column, paralyzing him.

A few days after the shooting, Briones told Amber Blakely that he had a conflict with someone and had "popped him in the back of his head, and he got what he deserved." Tr. p. 292. Briones also told Billy Jo Schultz about the shooting.

Davidson's condition deteriorated. After being advised by Davidson's mother and medical personnel that Davidson was going to die, St. Joseph County Police Department Sergeant Randy Kaps went to the hospital on November 2, 2009 to interview Davidson. Sergeant Kaps took a videotaped statement from Davidson, who was able to blink his eyes, move his head, and mouth words. Davidson indicated that Briones had shot him. Davidson was taken off of life support and died on December 1, 2009.

The State initially charged Briones with attempted murder as a Class A felony, carrying a handgun without a license as a Class A misdemeanor, criminal recklessness as a Class C felony, and felon in possession of a handgun as a Class C felony. The State later charged Briones with murder and dismissed the attempted murder charge. Briones filed a motion in limine regarding admission of Davidson's statement. After a hearing, the trial court denied Briones's motion. At the jury trial, Davidson's videotaped statement was admitted into evidence over Briones's objection. Briones testified that he fired the gun and shot Davidson, but he claimed that Davidson also had a gun. The jury found Briones guilty of murder, carrying a handgun without a license as a Class A misdemeanor, and criminal recklessness as a Class C felony, and the State dismissed the felon in possession of a handgun charge. The trial court sentenced Briones to an aggregate sentence of seventy-three years.

Analysis

Briones argues that the trial court abused its discretion by admitting Davidson's statement as a dying declaration under Indiana Evidence Rule 804(b)(2)¹ and that the admission of the statement violated the Confrontation Clause of the Sixth Amendment.² We need not address Briones's arguments because, even if the trial court erred by admitting the statement, any error was harmless.

Errors in the admission of evidence are harmless unless the error affects the substantial rights of the parties. Ind. Trial Rule 61; Jones v. State, 780 N.E.2d 373, 377 (Ind. 2002). Further, "[v]iolations of the right of cross-examination do not require reversal if the State can show beyond a reasonable doubt that the error did not contribute to the verdict." Koenig v. State, 933 N.E.2d 1271, 1273 (Ind. 2010). Here, Davidson indicated in his statement that Briones shot him. However, Vaughn and Hunt also testified that Briones shot Davidson, and Blakely and Schultz testified regarding Briones's statements to them after the shooting. Moreover, Briones testified at the trial and admitted shooting Davidson. Consequently, Davidson's statement was merely cumulative of other significant evidence that Briones shot him. Any error in the admission of Davidson's statement was harmless.

¹ Indiana Evidence Rule 804(b)(2) provides: "The following are not excluded by the hearsay rule if the declarant is unavailable as a witness. . . (2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death."

² We note that the United States Supreme Court held in Giles v. California, 554 U.S. 353, 358-59, 128 S. Ct. 2678, 2682-83 (2008), that dying declarations were "admitted at common law even though they were unconfessed" and were a "historic exception" to the Confrontation Clause requirements.

Conclusion

Any error in the admission of Davidson's statement was harmless. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.